

Subsection (e) specifies eligibility for chapter 13, Adjustment of Debts of an Individual with Regular Income. An individual with regular income, or an individual with regular income and the individual's spouse, may proceed under chapter 13. As noted in connection with the definition of the term "individual with regular income", this represents a significant departure from current law. The change might have been too great, however, without some limitation. Thus, the debtor (or the debtor and spouse) must have unsecured debts that aggregate less than \$100,000, and secured debts that aggregate less than \$500,000. These figures will permit the small sole proprietor, for whom a chapter 11 reorganization is too cumbersome a procedure, to proceed under chapter 13. It does not create a presumption that any sole proprietor within that range is better off in chapter 13 than chapter 11. The conversion rules found in section 1307 will govern the appropriateness of the two chapters for any particular individual. The figures merely set maximum limits.

Whether a small business operated by a husband and wife, the so-called "mom and pop grocery store," will be a partnership and thus excluded from chapter 13, or a business owned by an individual, will have to be determined on the facts of each case. Even if partnership papers have not been filed, for example, the issue will be whether the assets of the grocery store are for the benefit of all creditors of the debtor or only for business creditors, and whether such assets may be the subject of a chapter 13 proceeding. The intent of the section is to follow current law that a partnership by estoppel may be adjudicated in bankruptcy and therefore would not prevent a chapter 13 debtor from subjecting assets in such a partnership to the reach of all creditors in a chapter 13 case. However, if the partnership is found to be a partnership by agreement, even informal agreement, than a separate entity exists and the assets of that entity would be exempt from a case under chapter 13.

#### REFERENCES IN TEXT

Section 351 of the Small Business Investment Act of 1958, referred to in subsec. (b)(2), is classified to section 689 of Title 15, Commerce and Trade.

Section 301 of the Small Business Investment Act of 1958, referred to in subsec. (b)(2), is classified to section 681 of Title 15, Commerce and Trade. Subsec. (d) of section 301 was repealed by Pub. L. 104-208, div. D, title II, § 208(b)(3)(A), Sept. 30, 1996, 110 Stat. 3009-742.

Section 3(h) of the Federal Deposit Insurance Act, referred to in subsec. (b)(2), is classified to section 1813(h) of Title 12, Banks and Banking.

Section 25A of the Federal Reserve Act, referred to in subsecs. (b)(2) and (d), popularly known as the Edge Act, is classified to subchapter II (§611 et seq.) of chapter 6 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 12 and Tables.

Section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991, referred to in subsecs. (b)(2) and (d), is classified to section 4422 of Title 12, Banks and Banking.

#### AMENDMENTS

2000—Subsec. (b)(2). Pub. L. 106-554, §1(a)(8) [§1(e)], inserted "a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958," after "homestead association,".

Pub. L. 106-554, §1(a)(5) [title I, §112(c)(1)], substituted "except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multi-lateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or" for "or".

Subsec. (d). Pub. L. 106-554, §1(a)(5) [title I, §112(c)(2)], amended subsec. (d) generally. Prior to amendment,

subsec. (d) read as follows: "Only a person that may be a debtor under chapter 7 of this title, except a stockbroker or a commodity broker, and a railroad may be a debtor under chapter 11 of this title."

1994—Subsec. (b)(2). Pub. L. 103-394, §§220, 501(d)(2), inserted "a small business investment company licensed by the Small Business Administration under subsection (c) or (d) of section 301 of the Small Business Investment Act of 1958," after "homestead association," and struck out "(12 U.S.C. 1813(h))" after "Insurance Act".

Subsec. (c)(2). Pub. L. 103-394, §402, substituted "specifically authorized, in its capacity as a municipality or by name," for "generally authorized".

Subsec. (e). Pub. L. 103-394, §108(a), substituted "\$250,000" and "\$750,000" for "\$100,000" and "\$350,000", respectively, in two places.

1988—Subsec. (c)(3). Pub. L. 100-597 struck out "or unable to meet such entity's debts as such debts mature" after "insolvent".

1986—Subsec. (f). Pub. L. 99-554, §253(1)(B), (2), added subsec. (f) and redesignated former subsec. (f) as (g).

Subsec. (g). Pub. L. 99-554, §253(1), redesignated former subsec. (f) as (g) and inserted reference to family farmer.

1984—Subsec. (a). Pub. L. 98-353, §425(a), struck out "in the United States," after "only a person that resides".

Subsec. (c)(5)(D). Pub. L. 98-353, §425(b), substituted "transfer that is avoidable under section 547 of this title" for "preference".

Subsec. (d). Pub. L. 98-353, §425(c), substituted "stockbroker" for "stockholder".

Subsec. (f). Pub. L. 98-353, §301, added subsec. (f).

1982—Subsec. (b)(2). Pub. L. 97-320 inserted reference to industrial banks or similar institutions which are insured banks as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)).

#### EFFECTIVE DATE OF 1994 AMENDMENT

Amendment by Pub. L. 103-394 effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-597 effective Nov. 3, 1988, but not applicable to any case commenced under this title before that date, see section 12 of Pub. L. 100-597, set out as a note under section 101 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-554 effective 30 days after Oct. 27, 1986, but not applicable to cases commenced under this title before that date, see section 302(a), (c)(1) of Pub. L. 99-554, set out as a note under section 581 of Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-353 effective with respect to cases filed 90 days after July 10, 1984, see section 552(a) of Pub. L. 98-353, set out as a note under section 101 of this title.

#### ADJUSTMENT OF DOLLAR AMOUNTS

For adjustment of dollar amounts specified in subsec. (e) of this section by the Judicial Conference of the United States, effective Apr. 1, 1998, see note set out under section 104 of this title.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 104, 349, 921 of this title.

### § 110. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions

(a) In this section—

(1) “bankruptcy petition preparer” means a person, other than an attorney or an employee of an attorney, who prepares for compensation a document for filing; and

(2) “document for filing” means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

(b)(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer’s name and address.

(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.

(c)(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer’s signature, an identifying number that identifies individuals who prepared the document.

(2) For purposes of this section, the identifying number of a bankruptcy petition preparer shall be the Social Security account number of each individual who prepared the document or assisted in its preparation.

(3) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.

(d)(1) A bankruptcy petition preparer shall, not later than the time at which a document for filing is presented for the debtor’s signature, furnish to the debtor a copy of the document.

(2) A bankruptcy petition preparer who fails to comply with paragraph (1) may be fined not more than \$500 for each such failure unless the failure is due to reasonable cause.

(e)(1) A bankruptcy petition preparer shall not execute any document on behalf of a debtor.

(2) A bankruptcy petition preparer may be fined not more than \$500 for each document executed in violation of paragraph (1).

(f)(1) A bankruptcy petition preparer shall not use the word “legal” or any similar term in any advertisements, or advertise under any category that includes the word “legal” or any similar term.

(2) A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).

(g)(1) A bankruptcy petition preparer shall not collect or receive any payment from the debtor or on behalf of the debtor for the court fees in connection with filing the petition.

(2) A bankruptcy petition preparer shall be fined not more than \$500 for each violation of paragraph (1).

(h)(1) Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a declaration under penalty of perjury disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor.

(2) The court shall disallow and order the immediate turnover to the bankruptcy trustee of any fee referred to in paragraph (1) found to be in excess of the value of services rendered for the documents prepared. An individual debtor

may exempt any funds so recovered under section 522(b).

(3) The debtor, the trustee, a creditor, or the United States trustee may file a motion for an order under paragraph (2).

(4) A bankruptcy petition preparer shall be fined not more than \$500 for each failure to comply with a court order to turn over funds within 30 days of service of such order.

(i)(1) If a bankruptcy case or related proceeding is dismissed because of the failure to file bankruptcy papers, including papers specified in section 521(1) of this title, the negligence or intentional disregard of this title or the Federal Rules of Bankruptcy Procedure by a bankruptcy petition preparer, or if a bankruptcy petition preparer violates this section or commits any fraudulent, unfair, or deceptive act, the bankruptcy court shall certify that fact to the district court, and the district court, on motion of the debtor, the trustee, or a creditor and after a hearing, shall order the bankruptcy petition preparer to pay to the debtor—

(A) the debtor’s actual damages;

(B) the greater of—

(i) \$2,000; or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer’s services; and

(C) reasonable attorneys’ fees and costs in moving for damages under this subsection.

(2) If the trustee or creditor moves for damages on behalf of the debtor under this subsection, the bankruptcy petition preparer shall be ordered to pay the movant the additional amount of \$1,000 plus reasonable attorneys’ fees and costs incurred.

(j)(1) A debtor for whom a bankruptcy petition preparer has prepared a document for filing, the trustee, a creditor, or the United States trustee in the district in which the bankruptcy petition preparer resides, has conducted business, or the United States trustee in any other district in which the debtor resides may bring a civil action to enjoin a bankruptcy petition preparer from engaging in any conduct in violation of this section or from further acting as a bankruptcy petition preparer.

(2)(A) In an action under paragraph (1), if the court finds that—

(i) a bankruptcy petition preparer has—

(I) engaged in conduct in violation of this section or of any provision of this title a violation of which subjects a person to criminal penalty;

(II) misrepresented the preparer’s experience or education as a bankruptcy petition preparer; or

(III) engaged in any other fraudulent, unfair, or deceptive conduct; and

(ii) injunctive relief is appropriate to prevent the recurrence of such conduct,

the court may enjoin the bankruptcy petition preparer from engaging in such conduct.

(B) If the court finds that a bankruptcy petition preparer has continually engaged in conduct described in subclause (I), (II), or (III) of clause (i) and that an injunction prohibiting such conduct would not be sufficient to prevent

such person's interference with the proper administration of this title, or has not paid a penalty imposed under this section, the court may enjoin the person from acting as a bankruptcy petition preparer.

(3) The court shall award to a debtor, trustee, or creditor that brings a successful action under this subsection reasonable attorney's<sup>1</sup> fees and costs of the action, to be paid by the bankruptcy petition preparer.

(k) Nothing in this section shall be construed to permit activities that are otherwise prohibited by law, including rules and laws that prohibit the unauthorized practice of law.

(Added Pub. L. 103-394, title III, § 308(a), Oct. 22, 1994, 108 Stat. 4135.)

#### REFERENCES IN TEXT

The Federal Rules of Bankruptcy Procedure, referred to in subsec. (i)(1), are set out in the Appendix to this title.

#### EFFECTIVE DATE

Section effective Oct. 22, 1994, and not applicable with respect to cases commenced under this title before Oct. 22, 1994, see section 702 of Pub. L. 103-394, set out as an Effective Date of 1994 Amendment note under section 101 of this title.

### CHAPTER 3—CASE ADMINISTRATION

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#### AMENDMENTS

1986—Pub. L. 99-554, title II, § 205(b), Oct. 27, 1986, 100 Stat. 3098, added item 307.

#### CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 103, 782 of this title; title 15 section 78ff.

#### SUBCHAPTER I—COMMENCEMENT OF A CASE

##### § 301. Voluntary cases

A voluntary case under a chapter of this title is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter. The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2558.)

#### HISTORICAL AND REVISION NOTES

##### LEGISLATIVE STATEMENTS

Sections 301, 302, 303, and 304 are all modified in the House amendment to adopt an idea contained in sections 301 and 303 of the Senate amendment requiring a petition commencing a case to be filed with the bankruptcy court. The exception contained in section 301 of the Senate bill relating to cases filed under chapter 9 is deleted. Chapter 9 cases will be handled by a bankruptcy court as are other title 11 cases.

##### SENATE REPORT NO. 95-989

Section 301 specifies the manner in which a voluntary bankruptcy case is commenced. The debtor files a petition under this section under the particular operative chapter of the bankruptcy code under which he wishes to proceed. The filing of the petition constitutes an order for relief in the case under that chapter. The section contains no change from current law, except for the use of the phrase "order for relief" instead of "adjudication." The term adjudication is replaced by a less pejorative phrase in light of the clear power of Congress to permit voluntary bankruptcy without the necessity for an adjudication, as under the 1898 act [former title 11], which was adopted when voluntary bankruptcy was a concept not thoroughly tested.

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 101, 362, 365, 522, 541, 901, 921 of this title.

##### § 302. Joint cases

(a) A joint case under a chapter of this title is commenced by the filing with the bankruptcy court of a single petition under such chapter by an individual that may be a debtor under such chapter and such individual's spouse. The commencement of a joint case under a chapter of this title constitutes an order for relief under such chapter.

(b) After the commencement of a joint case, the court shall determine the extent, if any, to which the debtors' estates shall be consolidated.

(Pub. L. 95-598, Nov. 6, 1978, 92 Stat. 2558.)

#### HISTORICAL AND REVISION NOTES

##### SENATE REPORT NO. 95-989

A joint case is a voluntary bankruptcy case concerning a wife and husband. Under current law, there is no

<sup>1</sup> So in original. Probably should be "attorneys".